

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

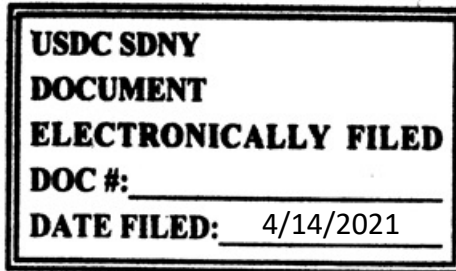
Jeriel Alexander,

Plaintiff,

-against-

Private Protective Services, Inc.,

Defendant.



1:19-cv-10004 (JPO) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

WHEREAS, on April 1, 2021, the U.S. Marshals Service filed a “USM-285” Process Receipt and Return form indicating that Defendant had been served with the Summons and Complaint in this action on March 11, 2021, via personal service on the New York Secretary of State, as statutory agent for service of process on a business corporation¹ (ECF No. 27);

WHEREAS, Defendant’s time to answer or otherwise respond to the Complaint expired on April 1, 2021;²

WHEREAS, on April 9, 2021, Plaintiff, acting *pro se*, filed a Motion for Default Judgment against Defendant (ECF No. 28);

WHEREAS, no Clerk’s Certificate of Default against Defendant has been entered in this action;

¹ See Fed. R. Civ. P. 4(h)(1)(a); N.Y. C.P.L.R. 311; N.Y. Bus. Corp. Law § 306.

² Although Defendant was served via a method provided for by New York State law, and under New York law a defendant has 30 days to respond to a complaint, see CPLR 3012(c), the applicable response time here remains the 21 days provided for by the Federal Rules of Civil Procedure. See *Kondaur Cap. Corp. v. Cajuste*, 849 F. Supp. 2d 363, 367 (E.D.N.Y. 2012) (citing *Beller & Keller v. Tyler*, 120 F.3d 21, 25-26 (2d Cir. 1997)). In any event, the issue is moot, given that 30 days have now elapsed without any response from Defendant.

WHEREAS, a Clerk's Certificate of Default against a defendant must be entered by the Clerk of Court before a plaintiff may move for default judgment against that defendant.

NOW, THEREFORE, it is hereby ORDERED that Plaintiff's Motion for Default Judgment is DENIED WITHOUT PREJUDICE. Plaintiff may renew such motion after the Clerk of Court has entered a Clerk's Certificate of Default against Defendant. In order to enable to Clerk of Court to do so, Plaintiff must file a Proposed Clerk's Certificate of Default and an Affidavit in support thereof, following the procedure set forth at <https://www.nysd.uscourts.gov/forms/clerks-certificate-default>.

The Clerk of Court is respectfully requested to mail a copy of this Order to Plaintiff.

SO ORDERED.

DATED: New York, New York
April 14, 2021



STEWART D. AARON
United States Magistrate Judge